

**BEFORE THE
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION,)

On Its Own Motion)

-vs.-)

DOCKET NO. 00-0340

ILLINOIS AMERICAN WATER COMPANY,)

Proposed general increase in water rates)

)

**THE CITY OF O’FALLON’S RESPONSE TO IAWC’S SUGGESTION
THAT O’FALLON’S BRIEF ON EXCEPTIONS SHOULD BE STRICKEN**

NOW COMES the CITY OF O’FALLON ("O’Fallon") by it attorneys, ANCEL, GLINK, DIAMOND, BUSH, DICIANNI & ROLEK, P.C., and responds to IAWC’s suggestion, buried within its reply brief on exceptions, that O’Fallon’s brief on exceptions be stricken, as follows:

1. A brief is not a motion. A brief is to contain no more than points in argument and authorities cited in support of the points made. It is merely an attempt to persuade the decision-maker what his decision or order on the issue(s) being addressed should be, or how it should be expressed. By contrast, a motion is the application for the entry of requested relief. The motion may become the subject of a briefing schedule. But, since a brief itself is not a motion, a desire expressed in a brief is not an effective request for relief and cannot raise anything not already raised by motion. There really is nothing, therefore, before the Administrative Law judge calling for a response from O’Fallon, and nothing on which an independent ruling can be based. It is only out of our abundance of caution that O’Fallon says anything on this topic in response, and in doing so, O’Fallon does not intend any waiver of its objection to the reference in the brief being exalted to the status of motion.

2. It was the clearly expressed intention of the Administrative Law Judge during the hearing in Springfield that the record of these proceedings be as public as possible. In an early ruling in this proceeding, the Administrative Law judge demonstrated that the mere mention of "security" was not of itself sufficient to render what was sought to be discovered or said privileged or confidential (ALJ Ord., 12/19/02). The Administrative Law judge noted: "Illinois-American's 'all or nothing' approach consisting primarily of blanket assertions and conclusions is over broad." *Id*, p.1. For itself, O'Fallon repeatedly expressed its position that the net IAWC was attempting to throw over the most questionable parts of its rate case (past and future security costs) was anchored more in an intention to hamper the opposition than in any concern for safety. (E.g. see, Response to IAWC Motion for Auth. Pursuant to § 2 of Prot. Ord., 12/18/02, p.1.)

3. O'Fallon disclosed no sensitive information in its brief on exceptions. The section of O'Fallon's brief that IAWC deemed offensive reads:

O'Fallon's security witness Jim Brooks questioned IAWC's proposal to use security guards twenty-four hours per day, seven days per week and overtime employees for water sample testing and other services

Indeed, O'Fallon revealed nothing that had not been previously revealed by an IAWC spokesman in the most public forum, a newspaper:

Most of the metro-east's fresh water system now is under the protection of one of the world's oldest security agencies.

The use of Pinkerton security guards at several Madison and St. Clair county water intake tanks and treatment plants is part of an economy move, said Dennis Wingertsahn, manager of Illinois-American Water Co.'s southern division.

* * *

The cost of using off-duty police has been about \$260,000 a year in St. Clair and Madison counties. Police received overtime pay from the company of about \$45 an hour. Wingertsahn decline to say what the Pinkerton bill is expected to total.

In Madison County, Pinkerton guards now are stationed at intake tanks in Granite City and on Chouteau Island, in the Mississippi River near Granite City. Alton water works will continue to receive local police protection.

Elizabeth Donald, *Water Company Hires Pinkerton Security Guards*, BELLEVILLE NEWS DEMOCRAT, March 12, 2003 at 1A, *available at* 2003 WL 2460589.

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Illinois-American spokesman Terry Mackin confirmed that the company has completed its evaluations, but he would not release the specifics. He said the information would be withheld for security purposes.

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Almost immediately after the World Trade Center towers fell, Illinois-American began using off-duty police officers to guard its plants -- at a cost of \$45 an hour. In March, however, Illinois-American hired Pinkerton security guards to replace those officers.

"It was a cost-effective move," Mackin said. "Security guards are the most visible part of our security program."

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Jayne Matthews, *Taxpayers May Foot Bill for Safe Water*, BELLEVILLE NEWS DEMOCRAT, June 3, 2003, at 1A, *available at* 2003 WL 2462129.

IAWC made a distinction between what could be made public and what could not be made public. IAWC's spokesman considered the information in the article to be properly public and that public information was no different in substance than what O'Fallon put in its Brief on Exceptions, only IAWC's spokesman was much more detailed than O'Fallon.

4. In any event, guards that control access regarding deliveries and visitors to water company facilities are not only seen by the public; they are intended to have regular contact with them. Water is, and

has been regularly tested for health, safety and quality, even before September 11. Customers assume that this is done and indeed, rely on it being done. Nothing that O'Fallon said revealed the dollar cost of guards or other services; nothing that O'Fallon said revealed the number of guards, which facilities they are stationed at their routine's or their strategies, or anything else of value to a saboteur or terrorist (IAWC's manager of its southern division was far more explicit and detailed to a newspaper (see attached) than O'Fallon's brief on exceptions).

5. IAWC's reference is clearly advocacy run riot. Any motion would have had to be limited to the matter that was, arguably, improper, not an entire brief, only a sentence or two of which is contended to be offensive. IAWC's brief is merely a grand gesture. An entire brief, which covers several exceptions, cannot be stricken because IAWC is bothered by a sentence or two in one exception. Even if a proper motion had been made, such a disproportional ruling could not be reasonably granted.

WHEREFORE, no action is needed, and IAWC's suggestion should be disregarded. If action were to be taken, however, it should be to deny the arrant suggestion made that any part, let alone the entirety, of O'Fallon's brief on exceptions should be stricken.

Respectfully submitted,

CITY OF O'FALLON, ILLINOIS,

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